BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RICHARD B. STRYKER Claimant	)	
VS.	)	
NORTH AMERICAN TRUCK & TRAILER Respondent	)	Docket No. 1,009,414
AND	)	
AIG CLAIM SERVICES, INC. Insurance Carrier	)	

ORDER

Respondent requested review of the May 15, 2003 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for an accidental injury suffered while claimant was working for respondent in the state of Missouri. The Administrative Law Judge (ALJ) determined the parties were subject to the Kansas Workers Compensation Act (Act) and that claimant's accidental injury arose out of and in the course of his employment. The ALJ ordered respondent to pay temporary total disability compensation as well as provide medical treatment.

The respondent argues the parties are not subject to the Act because the injury occurred in Missouri and claimant was hired in Missouri. Consequently, respondent argues the ALJ exceeded his authority by granting benefits.

Claimant argues the facts establish that the contract was made in the state of Kansas and, therefore, there is jurisdiction under the Act. Claimant further notes that the Board does not have jurisdiction to review an ALJ's preliminary award of temporary total disability compensation or medical compensation. Claimant requests the board to affirm the ALJ.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

It is undisputed that on December 23, 2002, claimant injured his left ankle when he stepped off a truck he was repairing while working for respondent. Claimant was provided medical treatment through March 3, 2003.

On April 7, 2003, claimant filed an application for preliminary hearing requesting medical treatment and temporary total disability compensation to be provided by the respondent.

Respondent argues the Act does not apply to the parties because claimant's contract for employment was made in Missouri and the accident occurred in Missouri. Respondent contends that the telephone offer claimant received was not the final act to form a contract because the individual who made the offer did not have authority to hire employees for respondent's service department.

In contrast, claimant testified that he accepted an offer of employment during a telephone conversation while he was in Topeka, Kansas. Claimant further notes the respondent's employee who made the offer of employment clearly had authority to hire because claimant began working when he first showed up for work on August 18, 2002, and continued working until after the accident.

The primary issue raised on appeal is whether the parties are subject to the Act. If a claimant is injured outside the state of Kansas, the Act shall apply only when the principal place of employment is within the state or the contract of employment was made within the state, unless the employment contract otherwise specifically provides.[1]

The claimant had contacted Carl Snyder, a salesman and parts manager for respondent, and inquired about a job with respondent. The claimant was directed to get a physical examination and when he received the results he again called Mr. Snyder and was hired. The claimant was in Topeka, Kansas, when this telephone conversation took place. Claimant then took his tools and showed up for work on August 18, 2002, at respondent's facility in Kansas City, Missouri.

Mr. Snyder met with claimant and gave him a tour of the facility and claimant then began his mechanic work. A few hours later, claimant went to the office manager's office and completed paperwork including a W-4, I-9 as well as an application for employment.

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[1] K.S.A. 44-506.

Chris Ross, respondent's operations manager, testified his job included approval of the hiring and firing of employees. Mr. Ross noted that filling out an application for employment was required paperwork in order for an employee to receive a paycheck. Mr. Ross concluded that claimant was not an employee until all the paperwork was completed. But Mr. Ross did not dispute that claimant had agreed to take a job with respondent before bringing his tools to the Kansas City, Missouri, work place.[2] Mr. Ross further agreed that Mr. Snyder had authority to hire for the service office but not for the service department where claimant was employed. Lastly, Mr. Ross testified:

> Q. All right. Mr. -- when Mr. Stryker says he was told he had a job, that he had accepted the job, you don't have any way to refute that do you?
>
> A. No.[3]

Kansas case law states that the contract is "made" when and where the last act necessary for its formation is done.[4] When an act is the acceptance of an offer during a telephone conversation, the contract is "made" where the acceptor speaks his or her acceptance.[5]

The Kansas Workers Compensation Act is to be liberally construed for the purpose of bringing employers and employees within the provisions of the Act.[6] Here, the Board finds the employment contract was made when claimant accepted respondent's job offer over the telephone in Topeka, Kansas. Other employment requirements such as filling out the employment application, W-4 and I-9 forms were not the last act necessary for the formation of the employment contract. The completion of those other employment requirements were conditions subsequent to the contract and did not prevent it from initially coming into existence.[7]

Respondent next argues that Mr. Snyder did not have authority to hire workers for respondent's service department. Express agency exists when the principal expressly authorizes the agent to perform an act. Implied agency may exist if it appears from the parties' words, conduct, or other circumstances that the principal intended to give the agent authority to act. Under Kansas law, an agency relationship may exist notwithstanding

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[2] P.H. trans. at 84.

[3] Id. at 87.

[4] *Smith v. McBride & Dehmer Construction Co.*, 216 Kan. 76, 530 P.2d 1222 (1975).

[5] *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, Syl. 1, 512 P.2d 438 (1973).

[6] *Chapman v. Beech Aircraft Corp.*, 258 Kan. 653, 907 P.2d 828 (1995).

[7] *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 263, 3 P.3d 551 (2000).

either a denial of agency by the alleged principal or a lack of mutual understanding of agency between the parties.[8]

Mr. Ross admitted that Mr. Snyder had actual authority to hire but he further noted that such authority was limited to the service office. It is undisputed that Mr. Snyder had express authority to hire workers for respondent and it is clear from the conduct of respondent in this case that Mr. Snyder had implied authority to hire for the service department. And Mr. Snyder's actions indicate that he believed his authority to hire was not limited. Respondent employed claimant in the service department as a mechanic and benefitted from the hire. Moreover, Mr. Ross could not deny that claimant had been offered and accepted the job over the telephone in his conversation with Mr. Snyder. The Board concludes Mr. Snyder had authority to hire claimant and affirms the ALJ's determination that the parties are covered by the Act.

Lastly, respondent argues the ALJ exceeded his authority by granting clamant temporary total disability benefits. Claimant argues the Board does not have jurisdiction to review an ALJ's preliminary hearing award of temporary total disability benefits. The Board agrees.

The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:[9]

(1) Did the worker sustain an accidental injury?

(2) Did the injury arise out of and in the course of employment?

(3) Did the worker provide timely notice and timely written claim?

(4) Is there any defense to the compensability of the claim?

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.[10] Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but

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[8] *In re Tax Appeal of Scholastic Book Clubs, Inc.*, 260 Kan. 528, 920 P.2d 947 (1996).

[9] K.S.A. 44-534a(a)(2).

[10] K.S.A. 2002 Supp. 44-551(b)(2)(A).

includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.[11]

An ALJ has the jurisdiction and authority to grant temporary total disability benefits at a preliminary hearing. Therefore, Judge Avery did not exceed his jurisdiction. The issue of whether claimant's medical condition and employment situation entitles claimant to receive temporary total disability benefits is not an issue that is subject to review from a preliminary hearing order. At this juncture of the proceeding, the Board does not have the authority to weigh the evidence and determine if claimant is temporarily and totally disabled.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.[12]

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated May 15, 2003, is affirmed.

IT IS SO ORDERED.

Dated this 31st day of July 2003.

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BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
David F. Menghini, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[11] See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683, P.2d 902 (1984).

[12] K.S.A. 44-534a(a)(2).